

#### Members

Rep. Jud McMillin  
Rep. Ralph Foley  
Rep. John Bartlett  
Rep. Clyde Kersey  
Sen. James Banks  
Sen. R. Michael Young  
Sen. James Arnold  
Sen. Greg Taylor  
Gary Miller  
Gary Roberts  
Hon. Margret G. Robb  
Mike McMahon  
Jerry Bonnet  
Matt Light  
Anita Samuel



## CODE REVISION COMMISSION

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#### LSA Staff:

John Stieff, Attorney for the Commission

Authority: IC 2-5-1.1-10

### MEETING MINUTES<sup>1</sup>

Meeting Date: October 16, 2012  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington St., Room 233  
Meeting City: Indianapolis, Indiana  
Meeting Number: 2

**Members Present:** Rep. Jud McMillin; Rep. Ralph Foley; Rep. John Bartlett; Rep. Clyde Kersey; Sen. R. Michael Young; Sen. Greg Taylor; Gary Roberts; Hon. Margret G. Robb; Mike McMahon; Jerry Bonnet; Matt Light.

**Members Absent:** Sen. James Arnold; Sen. James Banks; Gary Miller; Anita Samuel.

**Staff Present:** Mr. John Stieff, Director, Office of Code Revision, Legislative Services Agency; Mr. Craig Mortell, Deputy Director, Office of Code Revision; Mr. John Kline, Attorney, Office of Code Revision; Ms. Stephanie Lawyer, Attorney, Office of Code Revision; Mr. Michael Mullins, Attorney, Office of Code Revision; Ms. Katie Hill, Office of Code Revision.

### I. CALL TO ORDER

The meeting was called to order at 10:00 a.m. by Chairman Ralph Foley.

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<sup>1</sup> These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

## II. REVIEW OF MINUTES

The Commission reviewed the minutes of the Commission's last meeting on August 28, 2012, and there were no questions or revisions. The Commission approved the minutes by consent.

## III. INTRODUCTION

Mr. John Stieff, Director of the Office of Code Revision (OCR), made a few introductory remarks and explained continuing projects dealing with the technical corrections bill, emergency rulemaking provisions, and the General Assembly's drafting manual for discussion by the Commission.

## IV. DISCUSSION OF TECHNICAL CORRECTIONS BILL

The Chairman, Representative Foley, recognized Craig Mortell, Deputy Director of the Office of Code Revision (OCR), for a discussion of a few proposed changes in PD 3030, the draft adopted by the Commission as the 2013 technical corrections (TC) bill at the meeting of August 28, 2012. Mr. Mortell stated that he would explain a few proposed additions, corrections, and deletions, and that it was staff's suggestion that the final version of the 2013 TC bill be comprised of the contents of PD 3030 as revised by these proposed additions, corrections, and deletions.

Referring to a document entitled "Changes Made in and Proposed for PD 3030 to Arrive at the Final Version of the 2013 Technical Corrections Bill," Mr. Mortell discussed twelve changes in the text of PD 3030. The first two of the twelve changes he discussed were those already adopted by the Commission on August 28, 2012, namely, the insertion into the TC bill draft of:

[1] a SECTION amending IC 6-6-6.5-21.5 to replace population parameters that identified a county with the actual name of the county, "Allen County;" and

[2] a SECTION amending IC 33-38-11-10 to revise population parameter figures that were overlooked in the preparation of 2012's SEA 115, the act that revised population parameters throughout the Indiana Code in correspondence with the 2010 decennial census.

He explained that these two changes were set forth in the "Changes Made in and Proposed for PD 3030" document only as a reminder that they had already been adopted by the Commission.

Referring again to "Changes Made in and Proposed for PD 3030," Mr. Mortell then discussed the following proposed changes:

[3] Insert into the TC bill draft a SECTION amending IC 9-30-6-4.3 to correct two faulty internal references, replacing two instances of "IC 34-24-1-1(15)" with "IC 34-24-1-1(a)(15)".

[4] Insert into the TC bill draft a SECTION that strikes the references to "IC 13-14" and "IC 13-30-2-1" from subsection (c) of IC 13-11-2-17.

Mr. Mortell made the following points about change number [4]:

Since the mid-1980s, all of Indiana's environmental administrative rules have been adopted by three separate environmental rule making boards -- the air pollution control board, the water pollution control board, and the solid waste management board. HEA 1002 [P.L.133-2012] eliminated the three separate environmental boards and replaced them with a single "environmental rules board." However, HEA 1002 has been found to contain an error. The error was discovered in IC 13-11-2-17, the Code section defining "board" for the purposes of Title 13. Before 2012, IC 13-11-2-17 read in pertinent part as follows:

Sec. 17. (a) "Board", except as provided in subsections (b) through (g), refers to:

- (1) the air pollution control board;
- (2) the water pollution control board; or
- (3) the solid waste management board.

(b) . . .

(f) "Board", for purposes of IC 13-23-11, refers to the underground storage tank financial assurance board.

Through a floor amendment, HEA 1002 came to amend IC 13-11-2-17 to read in pertinent part as follows (with emphasis added):

Sec. 17. (a) "Board", except as provided in subsections (b) through (d), refers to the environmental rules board established by IC 13-13-8-3.

(b) . . .

(~~f~~) (c) "Board", for purposes of IC 13-14, IC 13-23-11, and IC 13-30-2-1, refers to the underground storage tank financial assurance board.

The insertion of "IC 13-14" and "IC 13-30-2-1" into what is now subsection (c) of IC 13-11-2-17 means that wherever the term "the board" appears in IC 13-14 and IC 13-30-2-1, that term ostensibly means *the underground storage tank financial assurance board* instead of the new environmental rules board. This simply must be an error.

The underground storage tank financial assurance board, under IC 13-23-11 (the chapter of the Code that established the UST financial assurance board), has quite limited duties and authority. Its function is mainly to oversee the financial condition and operation of two trust funds that are used in addressing problems associated with leaking underground petroleum storage tanks. It is inconceivable that the intent of HEA 1002 was for the underground storage tank financial assurance board to carry out the broad powers and responsibilities ascribed to "the board" in IC 13-14 and IC 13-30-2-1. Rather, it must have been the intent of the General Assembly for HEA 1002 to make the term "the board" as used in IC 13-14 and IC 13-30-2-1 refer to the new environmental rules board established by IC 13-13-8-3.

With the concurrence of the Department of Environmental Management, LSA attorneys of the Office of Bill Drafting and Research have prepared the following SECTION striking "IC 13-14" and "IC 13-30-2-1" from IC 13-11-2-17's subsection (c):

SECTION 1. IC 13-11-2-17, AS AMENDED BY P.L.133-2012, SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]: Sec. 17. (a) "Board", except as provided in subsections (b) through (d), refers to the environmental rules board established by IC 13-13-8-3.

(b) "Board", for purposes of IC 13-21, refers to the board of directors of a solid waste management district.

(c) "Board", for purposes of ~~IC 13-14~~, IC 13-23-11, and ~~IC 13-30-2-1~~, refers to the underground storage tank financial assurance board.

(d) "Board", for purposes of IC 13-26, refers to the board of trustees of a regional water, sewage, or solid waste district.

The effect of this SECTION would be that the meaning of "board" as used in IC 13-14 and IC 13-30-2-1 would now be governed by subsection (a) of IC 13-11-2-17, which defines "board" as the new environmental rules board. The Legislative Services Agency asks the Commission to include this SECTION in the 2013 technical corrections bill.

Continuing, Mr. Mortell discussed the following proposed changes:

[5] In SECTION 57 of PD 3030 (amending IC 24-4.4-1-202), eliminate the change that would transfer a sentence from subdivision (7) to subdivision (8) of IC 24-4.4-1-202(b), and eliminate the striking of subdivision (9) of IC 24-4.4-1-202(b) and the renumbering of the succeeding subdivisions.

[6] Delete SECTION 58 of PD 3030, which was included in PD 3030 only for purposes of amending a Code reference in correspondence to the renumbering of the subdivisions of IC 24-4.4-1-202(b). Because change number [5] will eliminate the renumbering of the subdivisions of IC 24-4.4-1-202(b), the amendment that SECTION 58 would have made in correspondence to the renumbering of the subdivisions is not needed.

[7] In SECTION 110 of PD 3030, which adds a new subsection (c) to IC 35-31.5-2-185 to recognize that, for purposes of IC 35-45-15, the term "law enforcement officer" includes a certain type of individual, replace "an alcoholic beverage enforcement officer" with "a federal enforcement officer" as the type of individual who is included within "law enforcement officer" for purposes of IC 35-45-15.

Representative Foley commented that the Criminal Code Evaluation Commission had been surprised to learn that there is no single, broadly applicable definition of "law enforcement officer" in Title 35 of the Indiana Code, and he expressed the hope that legislators and the Legislative Services Agency will be cautious in dealing with any future criminal law legislation that might involve the meaning of "law enforcement officer."

Matt Light of the Attorney General's office said that his office has noticed that Title 35 likewise lacks a single, broadly applicable definition of "law enforcement agency," and he suggested the need for caution in future legislation involving the term "law enforcement agency".

[8] Insert into the TC bill draft a SECTION amending IC 35-41-3-2's subsection (b), which provides that, for purposes of the section, the term "public servant" means "a person described in IC 35-41-1-17, IC 35-31.5-2-129, or IC 35-31.5-2-185". The SECTION will strike "IC 35-41-1-17" because IC 35-41-1-17 was repealed in 2012.

Senator Young commented that the 2012 act that added subsection (b) to IC 35-41-3-2 included the reference to "IC 35-41-1-17" even though IC 35-41-1-17 was being repealed and the text of IC 35-41-1-17 was being transferred to IC 35-31.5-2-129 and IC 35-31.5-2-185 because the addition of subsection (b) to IC 35-41-3-2 would take effect "upon passage" and the act repealing IC 35-41-1-17 and transferring its text to IC 35-31.5-2-129 and IC 35-31.5-2-185 would not take effect until July 1, 2012.

[9] Insert into the TC bill draft a SECTION that amends IC 35-44.1-2-8 by replacing the reference to "IC 35-44-2-3," the section that formerly defined the offense of impersonation of a public servant, which was repealed effective July 1, 2012, with a reference to IC 35-44.1-2-6, the new section defining the offense of impersonation of a public servant, which was added to the Code effective July 1, 2012.

[10] Insert into the TC bill draft a SECTION that amends IC 35-50-2-7, which provides in its subsection (c)(3) that a sentencing court may not convert a person's Class D felony conviction into a Class A misdemeanor conviction unless the court finds that the person has not been convicted of "perjury under IC 35-44-2-1 or official misconduct under IC 35-44-1-2", by inserting into subsection (c)(3) language recognizing that IC 35-44-2-1 and IC 35-44-1-2 have been repealed and that IC 35-44.1-2-1 and IC 35-44.1-1-1 are the new sections defining the offenses of perjury and official misconduct.

[11] Insert into the TC bill draft a SECTION that amends IC 36-1-21-5, which contains two references to IC 35-44-1-3, the former Code section defining the offense of conflict of interest that was repealed effective July 1, 2012, by replacing "IC 35-44-1-3" with a reference to IC 35-44.1-1-4, the new Code section into which the language of the former IC 35-44-1-3 was transferred.

[12] In SECTION 143 of PD 3030, which amends IC 36-12-2-25, a Code section requiring each library board to "set and charge a fee for a local library card issued under subsection (b)(2) and (b)(3)", eliminate the proposed replacement of the conjunction "and" with "or".

Mr. Mortell explained that an attorney in LSA's Office of Bill Drafting and Research had taken issue with PD 3030's proposed replacement of "and" with "or" because: [1] the reference to "library card" in subsection (c) of IC 36-12-2-25 might be taken as applying to *the entire category* of library cards issued to individuals who qualify under subsection (b)(2) and individuals who qualify under subsection (b)(3) rather than to a single card issued to a single individual; and [2] the wording of IC 36-12-2-25(c) -- including the conjunction "and" -- is nearly identical to the wording of IC 36-12-7-3(c), and there is good reason to keep the wording of the two Code sections nearly identical.

Representative Foley expressed reservations about eliminating the change in conjunctions, noting that a single library card could not be issued under both subsection (b)(2) *and* subsection (b)(3) because subsection (b)(2) provides for the issuance of library cards to "Indiana residents" and subsection (b)(3) provides for the issuance of library cards to "individuals who reside out of state". Senator Young, Judge Margret Robb, and Matt Light discussed the possibility of revising IC 36-12-2-25's subsection (c) so as to retain the conjunction "and" but accurately reflect the facts concerning IC 36-12-2-25(c). By consent, the Commission directed staff to revise the SECTION of PD 3030 amending IC 36-12-2-25 as suggested by Judge Robb and Mr. Light, which was as follows:

SECTION 143. IC 36-12-2-25, AS AMENDED BY P.L.84-2012, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25. (a) The

...

(c) Except as provided in subsection ~~(d)~~; **(e)**, a library board must set and charge a fee for:

**(1)** a local library card issued under subsection (b)(2); and

**(2) a local library card issued under subsection (b)(3).**

**(d)** The minimum fee that the board may set under ~~this~~ subsection **(c)** is . . .

With this revision of proposed change number [12], the Commission accepted the proposed changes set forth in the "Changes Made in and Proposed for PD 3030" document. The Commission then decided, by a voice vote of 10 - 0, to adopt PD 3030, as revised by the changes accepted at that day's meeting, as the final version of the 2012 technical corrections bill.

## V. PROPOSED REWRITE OF EMERGENCY RULEMAKING STATUTE

Mr. Michael Mullins, Attorney with the Office of Code Revision, presented the two options regarding emergency rules the Commission considered in the previous meeting:

1. Strike subsection IC 4-22-2-37.1(a) and replace it with a general statement of applicable rulemaking procedures.
2. Strike subsection IC 4-22-2-37.1(a) and organize the list in a new chapter with separate sections for each agency.

Chairman Foley requested information on the advantages and disadvantages of each option. Mr. Stieff noted that option 1 makes legislation easier to draft going forward because the list would not need to be updated upon each addition or deletion of rulemaking authority, and that the Indiana

Administrative Code Internet web site would contain the list and be updated each year. Mr. Stieff stated that option 2 gives the reader of the Indiana Code the benefit of having a single place to find all statutes referring to rulemaking powers.

Mr. Gary Roberts commented that trying to maintain two different places in the Code referencing a single rulemaking power may lead to inconsistencies and that option 1 makes the most sense. Mr. Matt Light inquired about individuals that are unable to access the list electronically if option 1 is chosen. Mr. Stieff commented that hard copies would be made available through the Legislative Information Center. Some discussion ensued regarding accessing certain rulemaking authorities through the Indiana register Internet web site. Mr. Bonnet asked if any language could be put in IC 4-22-2-37.1 noting that the list would be maintained on the Internet. A motion was adopted by consent of the Commission members to include a Noncode provision addressing Mr. Bonnet's concern.

Mr. Mullins explained some of the issues regarding ambiguities in the emergency rulemaking statute. He noted that he is working actively with the agencies to resolve ambiguities and generally deferring to the legal entities of the agencies in this regard.

Matt Light inquired if the Commission would be reviewing ambiguities in another meeting. Rep. Foley noted that this is the last meeting of the Commission. The members noted that they are deciding which option to approve to rewrite the emergency rule statute. Rep. Foley stated that the Commission was charging the staff to continue to review ambiguities and to work with the legal staffs of the agencies, and that those ambiguities would be dealt with in the legislation at a future date. Rep. Foley noted that the current draft under consideration by the Commission does not contain a resolution of the various ambiguities. A motion was made to approve option 1 and to include the Noncode provision suggested by Mr. Bonnet. The Commission decided by a roll call vote of 10 - 0 to approve option 1 as amended.

## **VI. PROPOSED DRAFTING MANUAL REVISIONS**

Chairman Foley noted that the Commission is considering a recommendation to the Legislative Council regarding the legislative drafting manual. Mr. Stieff stated that the manual had been revised since the last Commission meeting, and that the staff is seeking approval for the revisions and recommendation to the Legislative Council. Ms. Stephanie Lawyer, Attorney in the Office of Code Revision, explained the rewrite of the drafting manual. She noted that the manual was distributed to numerous people and posted on the Internet and that some revisions had been made based on comments received. Ms. Lawyer gave numerous examples of revisions to the manual including removing legislator names and drafter numbers from samples, correcting Code cites, streamlining the repealer section, and changing exhibits to reflect current formats. Also, Ms. Lawyer noted several changes yet to be made to update the table of contents, number the exhibits, undo color coded changes according to the recommendations made, and draft the emergency rulemaking section according to the Commission's choice of option 1.

Ms. Lawyer presented one issue regarding the use of the designation "ss" for special session Acts. Discussion ensued regarding the history of the designation and its usefulness in researching the Acts. The Commission members discussed whether the designation should be removed only prospectively. Mr. Stieff noted that it may not be appropriate to remove the designation retroactively because items using the designation are cited in past court cases and legal documents. Mr. Stieff stated that bill numbers would continue to use the "ss" designation.

A motion was made to recommend the amended drafting manual be adopted by the Legislative Council. The Commission decided by a roll call vote of 10 - 0 to make the recommendation.

**VII. OTHER BUSINESS**

Mr. Stieff inquired about authors for the bills presented to the Commission. Chairman Foley noted that Representative Jud McMillin is the author for the bill rewriting the emergency rules statute and that Senator R. Michael Young is the author for the technical corrections bill. The other legislative members of the Commission are coauthors for the bills.

**VIII. ADJOURNMENT**

Chairman Foley thanked the staff and members for their work and meaningful discussion, and noted that the Commission's work is critical for drafting understandable legislation. The meeting was adjourned by Chairman Foley at 11:45 a.m.